

CITY OF FLAGSTAFF STAFF SUMMARY REPORT



To: The Honorable Mayor and City Council
From: James B. Speed, (928) 779-7680
Flagstaff City Attorney's Office
Date: January 12, 2010
Meeting Date: February 2, 2010

Title: Consideration of Ordinance No. 2010-02: An ordinance amending Title 6, Police Regulations, Chapter 6-01, General Offenses, by repealing Section 6-01-001-0008, Furnishing Weapons and Other Articles to Prisoners.

Recommended Action:

At the Council Meeting of February 2, 2010:	Read Ordinance No. 2010-02 by title only.
At the Council Meeting of February 16, 2010:	Read Ordinance No. 2010-02 for the final time by title only and adopt.

ACTION SUMMARY:

As a result of the 1977 addition to the Arizona Revised Statutes of Section 13-2505(A), Promoting Prison Contraband, Flagstaff City Code Section 6-01-001-0008, Furnishing Weapons and Other Articles to Prisoners, was rendered obsolete. The present ordinance is put forward as part of an effort by the City Attorney's Office to remove or update those archaic, obsolete and ineffective ordinances currently found within the Flagstaff City Code.

DISCUSSION:

Background/History:

At the Tuesday, October 25, 1960 City Council Meeting the Flagstaff City Council considered Ordinance No. 510, an ordinance revising all "ordinances of a general and permanent nature" and codifying them in one document, "The Municipal Code of the City of Flagstaff, 1960". One of the ordinances put forward in the "Municipal Code of the City of Flagstaff, 1960" was Section 6-1-25, Furnishing Weapons and Other Articles to Prisoners, today's Section 6-01-001-0008. While a renumbering of all City ordinances has occurred in the intervening years, the language of this ordinance has remained unchanged. It reads as follows:

It shall be unlawful for any person to furnish or attempt to furnish or take into jail or to deliver or attempt to deliver to any prisoner therein confined, or in the custody of any officer, any weapon, tool, intoxicating liquors, drug or other article without the consent of the officer in charge.

In 1977 the Arizona State Legislature amended Arizona Revised Statutes Title 13, Criminal Code, by adding Section 13-2505(A), Promoting Prison Contraband. That statute states

A. A person, not authorized by law, commits promoting prison contraband:

1. By knowingly taking contraband into a correctional facility or the grounds of such facility; or
2. By knowingly conveying contraband to any person confined in a correctional facility; or
3. By knowingly making, obtaining or possessing contraband while being confined in a correctional facility or while being lawfully transported or moved incident to correctional facility confinement.

Relevant to this inquiry, "contraband" is defined as "any dangerous drug, narcotic drug, marijuana, intoxicating liquor of any kind, deadly weapon, dangerous instrument, explosive or other article whose use or possession would endanger the safety, security or preservation of order in a correctional facility or a juvenile secure care facility..." A.R.S. § 13-2501(1), while "correctional facility" is defined as "any place used for the enforcement or control of a person: (a) Charged with or convicted of an offense; or (b) Held for extradition; or (c) Pursuant to an order of court for law enforcement purposes," as well as "lawful transportation or movement incident to correctional facility confinement." A.R.S. § 13-2501(2). As the definition of contraband" is broad enough to encompass the prohibited items listed in the City's ordinance, "any weapon, tool, intoxicating liquors, drug or other article," and as the definition of "correctional facility" incorporates "jail" or "in the custody of any officer," a local ordinance prohibiting individuals from furnishing weapons or other articles to prisoners is redundant and no longer necessary.

Further contributing to the obsolescence of Section 6-01-001-0008 is the potential criminal sanctions imposed under the State statute. While a violation of Section 6-01-001-0008 is a class one misdemeanor, with a fine capped at \$2500.00, plus surcharges, and a maximum jail term of six months, a violations of A.R.S. § 13-2505(A) is a class two felony when the contraband is a deadly weapon, dangerous instrument or explosive, with a maximum five year term of imprisonment, and a class five felony when the contraband is a dangerous drug, narcotic drug or marijuana, with a maximum one and one-half year term of imprisonment. As a deterrent Section 6-01-001-0008's class one misdemeanor is insignificant when compared to the sanctions imposed for a violation of A.R.S. § 13-2505(A).

Key Considerations:

Since 2001, the year in which the Police Department's modern citation database was established, no individual has been charged with an F.C.C. 6-01-001-0008 offense.

The Police Department has reviewed this Staff Summary and Ordinance and is in favor of repealing F.C.C. 6-01-001-0008.

Community Benefits and Considerations:

Removing superfluous sections from the Flagstaff City Code results in a clearer, more accessible code.

Community Involvement:

The proposed Ordinance and Staff Summary will be posted in accordance with law, and interested persons are invited to comment at the City Council meetings at which the Ordinance will be under consideration.

Financial Implications:

As a violation of A.R.S. § 13-2505(A) constitutes either a class two or class five felony, any individual who knowingly promotes prison contraband will be cited into the Coconino County Superior Court. Under F.C.C. 6-01-001-0008 a person furnishing weapons and other articles to prisoners is guilty of a class one misdemeanor and is cited into the Flagstaff Municipal Court. A class one misdemeanor's maximum fine is \$2500.00 plus surcharges. As a result, the City will be unable to collect fines for those individuals promoting contraband within Flagstaff city limits after the effective date of this ordinance.

Options and Alternatives:

Don't repeal F.C.C. 6-01-001-0008, Furnishing Weapons and Other Articles to Prisoners.

Attachments/Exhibits:

Ordinance No. 2010-02



Division Director (Acknowledgment that all reviews have been completed and required approvals initialed below.)

INITIALS	RESPONSIBILITY	DATE	INITIALS	RESPONSIBILITY	DATE
_____	BIDS/PURCHASES	_____	_____	FINANCE/BUDGET	_____
_____	GRANTS	_____	_____	CONTRACTS	_____
_____	LEGAL	_____	_____	IGAS	_____
_____	_____	_____	_____	_____	_____

DATE OF COUNCIL APPROVAL: _____

ORDINANCE NO. 2010-02

AN ORDINANCE AMENDING TITLE 6, POLICE REGULATIONS, CHAPTER 6-01, GENERAL OFFENSES, BY REPEALING SECTION 6-01-001-0008, FURNISHING WEAPONS AND OTHER ARTICLES TO PRISONERS.

WHEREAS, in October, 1960 the City of Flagstaff adopted the "Municipal Code of the City of Flagstaff, 1960", one element of which was SECTION 6-01-001-0008, Furnishing Weapons and Other Articles to Prisoners, prohibiting the furnishing of contraband to those individuals in custody; and

WHEREAS, in 1977 the Legislature of the State of Arizona enacted a statute, A.R.S. § 13-2505, Promoting Prison Contraband, rendering Flagstaff City Code Section 6-01-001-0008, Furnishing Weapons and Other Articles to Prisoners, obsolete;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. That Section 6-01-001-0008, FURNISHING WEAPONS AND OTHER ARTICLES TO PRISONERS, of the Flagstaff City Code is hereby repealed.

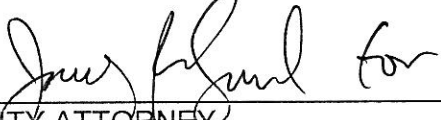
PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this _____ day of _____, 2010.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY